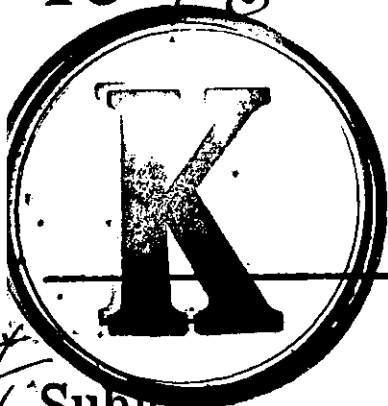


19.4.8

File No. O. Dist Police
48



Legal DEPARTMENT
A BRANCH

Subject.

Opinions under the

Bombay Dist Police Act,

1890

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File No. O. Dist Police.

Std. Sectt. Slip 24 B e.

48.

179A

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S.Os.
M.Y.V.
22/5.

[Handwritten signatures and dates]
20/5 30/5

Office of the R.L.A.

Rule 45 of the Rules for Licensing and Controlling Theatres and other Places of Public Amusement reads as follows

"Every person applying for a performance licence under these rules shall, unless specially relieved by the licensing officer from liability to this rule, submit a copy of every stage-play intended for production or exhibition to the licensing officer at least three days previous to the intended time of such production or exhibition."

This Rule figures in a section intituled "Additional Special Rules for Cinematographs". Rules 26 to 50, which are grouped under that section, do not, however, deal exclusively with cinematographs but are equally concerned with dramatic performances and public exhibitions of other kinds. The stage-play contemplated by Rule 45 is intended for production or exhibition. It is only with reference to exhibition that an attempt can be made to stretch it to cover a cinematograph film. It seems, however, that wherever exhibition of a film is intended the Rules in this section have used that expression (see, for example, Rules 36 and 37). The word "exhibition" simpliciter has thus been used not only in contra-distinction to performance but also in contra-distinction to exhibition of a film. It is intended to cover the case of an exhibition which is not a performance of a play nor the exhibition of a film but the ~~x~~ exhibition of a different kind like that of dancing, ~~xing~~ diversion or game (see Rule 42). Prima facie, therefore, the expression "stage-play intended for production or exhibition" would not cover the exhibition of a film. The word "stage-play" has apparently been ^{is} borrowed from the Theatres Act, 1843 (6 & 7 Vict. c.68), where it ~~is~~ defined as follows :

" In this Act the word 'stage-play' shall be taken to include every tragedy, comedy, farce, opera, burletta, interlude, melodrama, pantomime, or other entertainment of the stage or any part thereof."

In the case of *Wigan v. Strange* (1865, Law Reports 1 Q.B. 175) it was held by Willes J. that the words "or other entertainment of the stage" must be construed to mean entertainments such as those before expressed, namely, tragedy, etc., which are all of a dramatic character, and on that ground even a ballet divertissement or tumbling was not held to be an entertainment of the stage. The word "stage" literally means the platform on which plays, etc., are exhibited. The stage must obviously be distinguished from the screen. The stage is not used in the exhibition of a cinematograph film. For all these reasons it must be held that the expression "stage-play intended for production or exhibition" used in Rule 45 was not intended to apply to the exhibition of a cinematograph film.

2. It must further be pointed out that Rule 45 is attracted only when a person has to apply for a performance licence. Under Rule 36 no performance licence shall be required under these Rules for the exhibition of a film by means of a cinematograph which has been certified as suitable for public exhibition by any authority constituted under section 7 of the Cinematograph Act, 1918. It follows, therefore, that Rule 45 is inapplicable to a case of the exhibition of a film which has already been so certified. The difficulty experienced by the District Magistrate has been envisaged and provided for by the proviso to Rule 36.

Sd/- P.M.LAD,
9.2

Re/memberancer of Legal Affairs.

U.N. to H.D. (Poll) No.1388 dated the 9th February 1948.

4-Ce.

H.V.V.
22/5.

OFFICE OF THE P.L.A.Ban on cattle fairs.

Bombay District
Police Act, 1890,
section 39(1)
and
the Code of Criminal
Procedure,
1898, section 144.

Clause (j) of section 39(1) of the Bombay District Police Act, 1890 which is the only relevant provision does not provide for banning any fair to prevent the spread of any epidemic or infectious disease among the cattle. Nor does section 144, Criminal Procedure Code provide for the purpose although it can be availed of to prevent the spread of such disease involving danger to human life, health or safety.

Sd/- P.M.LAD,
29/1

Remembrancer of Legal Affairs.

U. R. to Agriculture and Rural Development Department

No. 1032, dated the 30th January 1948.

4-Cs.

H.V.V.

22/5.

Office of the R.L.A.

Rules for licensing and
controlling theatres
and other places of
public amusements.

Renewal after
condoning defects.

Seen and returned.

The ground of exemption stated by the
City Magistrate, Hublio is hardly tenable
as, for the purposes of renewal of a
license, compliance with the provisions of
the existing rules is obligatory (see rule 9).

Sd/- P.H.LAD,
20/5.

Remembrancer of Legal Affairs.

U.R. to P.W.D. No.4871, dated the 21st May 1948.

L.Cs.

M.V.V.
22/5.

L.D.R.I.No.4977,dt.26.4.48

Submitted.

The D.S.P., Ahmedabad City, the Addl. D.S.P., Ahmedabad Urban and the Addl. D.S.P. Ahmedabad Rural suggest the following changes in their designation :-

<u>Present designations.</u>	<u>Proposed Designations.</u>
D.S.P., Ahmedabad City.	Commissioner of Police, Ahmedabad City or Senior Supdt. of Police, Ahmedabad City.
Addl. D.S.P. (Ahmedabad Urban).	Deputy Commr. of Police, Ahmedabad City, or Junior Supdt. of Police, Ahmedabad City.
Addl. D.S.P. (Ahmedabad Rural).	District Supdt. of Police, Ahmedabad District.

These changes are suggested in order to avoid confusion in the minds of the public and avoid delay of correspondence. According to the above named D.S.P. and Addl., D.S.Ps. the changes suggested will be in conformity with sec. 6(1) of the District Police Act, 1890. The I.G.P. recommends the following changes only :-

<u>Present Designations.</u>	<u>Designations recommended.</u>
D.S.P., Ahmedabad City.	Senior Supdt. of Police Ahmedabad City.
Addl. D.S.P., Ahmedabad City.	Junior Supdt. of Police Ahmedabad City.

H.D.(A) has pointed out that even the changes recommended by the I.G.P. would involve an amendment of sec.6(1) of the District Police Act and that even if the changes are ordered by executive instructions the use of the changed designations while issuing statutory orders would give rise to legal difficulties. R.L.A. has been requested to advise on this point.

It appears from H.D. note at p.7 ante that

P.T.O.

It is not intended to amend the District Police Act for this purpose as Govt. has decided to reorganise the Ahmedabad Police Force, later on.

The relevant portion of sec. 6(1) of the D.P.A. is as follows :-

"The Provincial Govt. may appoint for each District Supdt. an Addl. Supdt. and such Asstt. and Deputy Supdt. of Police as it may think expedient,

An Addl. Supdt. of Police may, by a general or special order of the Provincial Govt. be empowered to exercise and perform in the district for which he is appointed or in any part thereof, all or any of the powers and duties under this Act of a Supdt. of police".

Sec. 4 of the D.P.A. which is under the heading 'Police Force to be entertained in each district', is as follows :-

"In each district of the Presidency of Bombay to which this Act extends, the Provincial Govt. may establish and entertain a police force of such number in the several ranks and having such an organization and such duties, rights and authority as are hereinafter presented and provided for.

Subject to the provisions of this Act, the pay all other conditions of service of members of the subordinate ranks of any police force shall be such as may be determined by the Provincial Govt."

Thus it will be seen that in each District to which the D.P.A. extends, the Provincial Govt. may establish and entertain a police force of such number in the several ranks and having such an organization and such duties rights and authority as prescribed in the Act. By virtue of sec. 1(2) of the Act, the provisions of the Act apply to Ahmedabad District and sec. 6(1) merely provides for appointment of Supdt. Addl. Supdt., Asstt. Supdt. and Deputy Supdt. of Police. The Act does not provide

for the appointment of Senior Supdts. or Junior Supdt. of p Police. Besides it is not known how the proposed changes will clear the confusion in the minds of the public. In these circumstances, it can be stated that if changes of designations on the above lines is intended, sec.6(1) of the Act will have to be amended. An executive order changing the designations of D/S.P., Ahmedabad City and the Addl., D.S.P. (Ahmedabad City) will not serve the purpose. Difficulties as apprehended by the H.D.(A) are likely to arise. The reply may therefore be :-

"R.L.A. confirms the view taken by the H.D.(A) at 'B' on page 11 ante."

S.B.
26/5.

A.L.R.

Reply may be :-

Seen and returned.

The view taken by H.D. at p/11 ante is correct.

R.T.K./ 26.6

R.L.A. *merely for the word senior*
I do not think that an amendment is needed *senior* is only a qualification of the word Supdts. A Senior Supdt. is still a Superintendent. However, considering the difficulty regarding the conversion --- of an additional into Junior. I am inclined to agree with A.L.R. *1948* Reply to be as suggested by him.

P.M.Lad,
26/5.

U.O.R. to H.D. No.5074 dtd. 28th May 1948.

A-Cs.

H.V.V.
22/5.

Office of the R.L.A.

The question was considered in L.D. in the Surat case (Revision Application No.49 of 1947) and it was decided to wait until the Sessions Judge pronounced his decision. Now that he has pronounced it, a copy of his judgment will be sent for and final advice will be given as to whether we should move the High Court or introduce amending legislation.

Sd/- P.M.LAD,
22/4.

Remembrancer of Legal Affairs.

U.R. to H.D. No.3907, dated the 22nd April 1948.

4-Cs.

H.V.V.
22/5.

L.D.R.I.No.6089 dt. 8-5-48.

Submitted with reference to H.D. note at pp.53-54 ante. Please see papers underlying R.L.A's opinion No. 10068, dated 20.10.47.

It appears that in pursuance of Advocate General's opinion No.53 of 1948 dated 10th December 1947. H.D. issued a letter No.1910/5-D dated 27/12/47 to the Commr. N.D. stating that the view expressed by the various R.L.As. in the past under sect. 77(1) of the B.D.P. Act, that police buildings are exempted from the payment of the general water rate are not correct and directing that in view of the accompanying Advocate General's opinion, Govt. will have to meet the claims of the Ahmedabad, Alibag and other municipalities. The Examiner, Local Fund Accounts, Bombay is of opinion that the orders contained in H. D. letter No. 1910/5-D, dated 27-12-47 are not quite in consonance with the Advocate General's opinion No.53/47. The Examiner thinks that in the last mentioned opinion, the Advocate General while generally agreeing with the views expressed on the subject by the various R.L.As, has made a clear distinction between the general taxes and the special or service taxes. The general water tax (or rate) has been held to be a general import on the occupiers or owners of properties without reference to any services rendered but for the general expenses of the municipalities. Consequently, according to the accompanying Adv. General's opinion and the opinions of previous R.L.As. a general water rate is not leviable on Police Lines.

R.L.A. has therefore been requested to state specifically whether the municipal general water tax is or is not exempted under sec. 77(1) of the B.D.P. Act, 1890. On reading para. 2 of Advocate General's opinion No.53 of 1947 it will be seen that water cess or rate is levied on individuals in respect of the services rendered to a particular property, hence according to para. 3 of

XXXX

the opinion, exemption cannot be claimed in that respect of that. It may also be noted the Adv.General has stated in his opinion that the views expressed by the various R.L.As. in the past to the effect that the dominant words in the sec. (viz.sec. 77(1) of the B.D.P. Act, 1890) are "an a/c of the occupation ~~xx~~ or use of any house" are correct. In these opinions (viz.No. 1088 dated 21.7.1894, No.30-M-dated 26.5.1922, No. 2207 dated 6.12.1923, No.8610, dated 30/11/1931) the various R.L.As. had opined that the exemption in sec. 77(1) of the B.D.P. Act, 1890 extends only to such taxes as are levied on a/c of occupation or use of a house and not to such taxes as a water rate levied by the local body for services rendered. The view taken by the Examiner is ~~xxxxxxxx~~ therefore not ~~g~~ correct. H.D. may therefore be informed that levy of general water rate is not exempted under sect. 77(1) of the B.D.P. Act, 1890.

(file containing R.L.A's opinion No.7575 dt.13/10/45 has been put in another case).

S.B.
15/6.

A.A.S.

In spite of Govt. Orders exempting the Police buildings from payment of the general water rate, the Ahmedabad Municipality sent bills claiming the tax and refused to give any fresh connection if the tax was not paid.

The Advocate General whose opinion was sought on the interpretation of section 77 of the Bombay District Police Act, ~~is~~ observed:-

"Municipal taxation is of two varieties. There are general taxes e.g.a general tax on a house or a building and a general water tax, which are levied for the purpose of raising funds to meet the expenses of running the municipal activities for the benefit of the district generally. There are also special taxes such as a special water cess or rate levied on individuals in respect of the services rendered to a particular property.

Pp.23-25 of
O.Munis. Govt.
Tax/47.

4-Cs.

M.N.U.

2215

Thus.....

Continued on P. 15(a)

Contd.,.....

Thus a special halakhore tax may be levied in regard to a particular property because specific services are performed in regard to that property.

4-Cs.
H.V.V.
22/5.

Office of the R.L.A.

Bombay District
Police Act,
1890.
Section 77(1)

Levy of general
water rate on
Police Lines.

The Advocate General's opinion No.53, dated 10.10.1947 has been correctly interpreted by the Examiner, Local Fund Accounts, Bombay in his letter at p.51 ante.

The Police quarters in the districts would be exempt from the municipal general water rate or tax but not from the special water rate or tax. The contention of the Ahmedabad Municipality is not correct. That Municipality is levying both general and ~~municipal~~ special water rate. Although the proviso to section 73 of the Bombay Municipal Boroughs Act, 1925 does not make a distinction between a general water rate and a special water rate, the special provision contained in section 77(1) of the Bombay District Police Act, 1890 would naturally prevail in so far as the house or place, whether belonging to His Majesty or not, which is occupied or used by the members of the Police force for the convenient performance of their duties.

The levy of water rate in Bombay is governed by different provisions. Consequently the fact that the Police quarters in Bombay are liable to the water rate would not affect the exemption of such quarters in the districts from the general water rate.

SA/- F.M.LAD,
21/7

Remembrancer of Legal Affairs.

U.R. to H.D.No.6855, dated the 22nd July 1948.
(Please see also R.L.A's No.5732 dated 27-4-50 file O -
Dist.Police/40).

4-C3.
H.V.V.
22/5.

Submitted.

2. Please see the petition at pp.1-5 ante.

3. One Navroji Limjibhai Bajwalla was charged under section 41 of District Police Act, 1890 for using his house as a common brothel. The Sub.Div. Magistrate and City Magistrate, Surat found the accused guilty and passed an order dated 20-7-48 that the accused shall discontinue such use of the house within one month from the date of this order.

The party has now made an application to Govt under section 81 of the Act to call and examine the record of the proceedings and annul the order passed by the Magistrate.

H.D. is of the view that section 81 confers a right on the aggrieved party to appeal to Govt. against any rule or order made by the Provincial Government under an authority confirmed by the Act. In this case action against the petitioner has not been taken under any rule or order made by the Provincial Government but by a statutory provision. The petitioner therefore has no right to appeal under this section. R.L.A. is requested to advise

4. The view taken by H.D. is correct. Section 41 of the District Police Act, 1890 provides that on complaint being made to a Magistrate that any house in a town or village in his district or sub-division is used as a common brothel or lodging house or place of resort for prostitution or disorderly persons of any description to the annoyance of respectable inhabitants of the vicinity, the said Magistrate may summon the owner or tenant of the house to answer the complaint and on being satisfied that the house is so used may order the

owner of tenant within a reasonable period which shall be set forth in the order to discontinue such ~~xx~~ use of it. And section 81 provides that in the case of any rule or order made by the Provincial Government, under an authority conferred by this Act it shall be competent to any person interested to apply to the Provincial Government by a memorial giveⁿ to a Secretary to the Provincial Government to annul reverse or alter the rule or order on the ~~ground~~ ground of its being unlawful oppressive or unreasonable. In this case as the order ~~xx~~ was made by the District Magistrate and ^{not} ~~xx~~ by Government the petitioner cannot avail himself of the benefit of section 81.

Sd/-
13/9/48.

A.S.

Magistrate

The Sub-Divisional Magistrate and City ~~Magistrate~~,
urat, has passed an order under sec. 41 of the Bombay District Police Act, 1890 against one Navroji Limjihhai Bajwala directing him to discontinue the use ~~of~~ the house as a place of resort by disorderly persons. Against the said Order, Bajwala has made an application under sec. 81 to Govt. requesting that the order passed by the S.D.M. may be set aside. The H.D. is of opinion that as no action has been taken against ~~the petitioner~~ petitioner under any rule or order made by the Provl. Govt. he has no right of appeal to Govt. under sec. 81. The R.L.A. is requested to advise whether the H.D. office view is correct.

Under sec. 41 of the Bombay District Police Act, a Magistrate of a district or of a ^{sub}-division on being satisfied that any house in a town or village in his district or subdivision is used for any of the purposes stated

A-Gs.
M.V.V.
22/5.

therein, may order the owner or tenant within a reasonable time set forth in the order to discontinue such use of it. The order so made is in the nature of a warning, but if it is disobeyed, the defaulter would be liable to be prosecuted under sec. 67 and punished with fine which may extend to twenty five rupees for every day that such order continues to be discharged. Under sec. 73, it shall not, except in obedience to a rule or order made by the Provl. Govt. or by the Magistrate of the district, be incumbent on the police to prosecute for an offence punishable under sec. 61, 62, 63, 64, 65, 69 or 70 when such offence has not occasioned serious mischief and has been promptly desisted from on warning ~~being~~ given. It does not appear that any prosecution is launched against Bajwala under section 67.

Sec. 81(1) is an enabling section under which any person interested can impugn the validity of any rule or order made by the Provl. Govt. on the ground of its being unlawful, oppressive or unreasonable. If the application is rejected, the person interested may institute a suit for a declaration that the rule or order is unlawful. Section 81 provides for challenging the validity of any rule or order made by the Provl. Govt. It does not confer upon the Provl. Govt. any appellate or revisional jurisdiction against an order of a Magistrate ~~made~~ under sec. 41. No appeal against the order of the Magistrate under section 41 can lie to Govt. and Govt. cannot entertain the present application under section 81. The view expressed in the H.D. Office note is correct. The papers may be "seen and returned" with the remark that the H.D. office view is correct.

Sd/-
14/9.

All.R. I agree. Sd/- R.T.K./15.9

R.L.A. Sd/- P.M.Lad, 17/9.

U.O.R. to H.D. No. 8947 dated the 21st September 1948.

L-Cs.
H.V.V.
22/9.

Office of the R.L.A.

Mr. Wanzara presumably belongs to the ^{police} ~~city~~ force for Greater Bombay. He will be accordingly governed by the City of Bombay Police Act, 1902. There is no provision in the Act debarring a police officer from being re-employed after retirement from service as a police officer either in Greater Bombay or in the Districts. There are presumably no rules or orders made by H.D. debarring re-employment of a police officer after his retirement.

2. It is not known in what capacity Mr. Wanzara ^a will be re-employed after retirement. If he is to be re-employed say as a Superintendent of Police or an Assistant Deputy Superintendent of Police, he can be so re-employed by the provincial Government under section 6 of the Bombay District Police Act, 1890. The Act does not prescribe any principles regarding the recruitment of Superintendents of Police, and there is no provision in the Act debarring re-employment of retired police officers as Superintendents of police. There does not, therefore, seem any objection to the employment of police officers after their retirement as Superintendents of Police. But H.D. may be consulted on the point.

3. If Mr. Wanzara is to be re-employed merely as a police officer, his case will be ~~governed~~ governed by the rules or orders which the Inspector-General of Police has made under section 27 of the Bombay District Police Act, 1890. It will be for the Home Department to find out whether such rules or orders contain anything which debar the re-employment of a police officer after his retirement from service.

SA/- P.H.LAD,
13/1.

Remembrance of Legal Affairs.

U.R. to P. & S.D. No.29-Conf. dated the 13th January 1949.

4-Cr.
U.V.V.
22/5.

Office of the P.L.A.

C.P.C.
Sec. 80.

Notice of suit.

Instruction of this suit may be awaited. It is no doubt clear that sub-rule(4) of rule 8 A of the Rules made under the Bombay District Police Act provides that the no-objection certificate which is granted under the sub-rule is without prejudice to the District Magistrate's rights to refuse or to grant a licence under rule 4. It will be possible to defend the suit on the ground that in this case too the District Magistrate was not acting in a judicial or quasi judicial capacity but in a purely administrative capacity for the purposes of preserving law and order, and he has ~~abs~~ absolute discretion in this ^{matter;} ~~matter;~~ and a mere grant of a no-objection certificate by him to any person does not guarantee that he has a right to get a licence for the opening of a place for amusement; nor does it impose a duty on the District Magistrate to grant such a licence.

Sd/- P.R.LAD,
30/12.

Remembrancer of Legal Affairs.

U.R. to H.D.No. 12472, dated 31st. Dec. 1948.

A.Cs.

M.V.V.
22/8.

Licensing of
theatres at
Hubli.

Bombay District
Police Act,
1890.
Section 39-A.

It appeared that the owners of Cinema Theatres of Hubli applied to the Hon'ble Minister for Public Works Department on 5th August 1946 for relaxing certain Rules for licensing and controlling theatres on the ground that their theatres being erected long before 1940, it was not possible for them to comply with the conditions without reducing to almost half of the accommodation in the theatres. After duly considering the merits of the case, Government decided on 6th January 1947 that the rules for licensing and Controlling theatres and other places of public amusements being framed by Government not only to ensure safety of the structures, but also to provide reasonable comfort to the audience and safeguards against hazards of fires, strict compliance with these rules was absolutely necessary. Even after these instructions were issued, the City Magistrate and Licensing Officer, Hubli, issued licenses to the Sudarshan Talkies, Hubli, Chandrakala Talkies, Hubli, Mohan Talkies and Halikarjun Talkies, Hubli, on 31st December 1947 relaxing rule 21 clauses (b), (c) and (j) and rules 22 and 25 on the ground that the seating accommodation will be reduced to half of what it is now if strict compliance is insisted on and the gangway 2' wide would be enough when there is an additional gangway in front of each class, etc. When the breach of the Government's orders regarding strict compliance with the rules was brought to the notice of Government, the R.L.A., who was consulted, opined : "The ground of exemption stated by the City Magistrate, Hubli is hardly tenable as, for the purposes of renewal of a license, compliance with the provisions of the existing rules is obligatory (see rule 9)." Thereupon Government issued orders to the effect that the action of the City Magistrate

L.-Cs.
M.V.V.
22/5.

and the Licensing Officer, Hubli, in setting aside the defects ~~just~~ pointed out by the Public Works Department and renewing the licenses was not in order and emphasized that for the purposes of a renewal of a licence compliance with the provisions of the existing rules was obligatory and further renewal of licenses should ~~not~~ be allowed unless and until the defects pointed out by the P.W.D. were remedied by the proprietors of the Cinema theatres. A copy of this letter was endorsed to the City Magistrate and Licensing Officer, Hubli, who, it appears, forwarded a copy thereof to the proprietors of the Theatres at Hubli. These proprietors have now represented to Government that the aforesaid orders of Government were illegal because the discretion to relax the rules vested in the Licensing Officer under rule 52 and Government can in no way interfere with that discretion by any executive order. The R.L.A. is requested to advise whether the contention of the proprietors is correct.

2. Under section 39-A of the Bombay District Police Act, 1890, the Magistrate of the District is empowered to make rules with the previous sanction of the Provincial Government for licensing and controlling theatres and other places of public amusement. It appears that the District Magistrate, Dharmar, with the previous sanction of Government, has framed the rules under section 39-A on the lines of the model rules made by Government under H.D. Order No. 3407 (Poll), dated the 12th December 1940. Under rule 3(1) the Licensing Officer for premises shall be in any municipality in which there is a City Magistrate, the City Magistrate, and elsewhere the Inamdar or Mahalkari, as the case may be. Under sub-rule (2) the licensing officer for premises shall in every case be subject to the control of the District Magistrate, who shall himself have all the powers of a licensing officer for premises. Rule 7 6(1) prescribes fees for a licence or renewal of a licence

A-Cs.
M.V.V.
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and under sub-rule (4) a licence for the premises mentioned in sub-rules (1) (a) and (3) of this rule may be granted or renewed for any period not extending beyond the 31st day of December of the year for which it is issued. Rule 20 provides that no licence for premises shall be granted unless the conditions prescribed in the following rule as regards the means of entrance and exit, the arrangements for ventilation and precautions against fire, are fulfilled. Under rule 52, the licensing officer concerned may, in his discretion and for due reason, exempt any licensee from any of the requirements of these rules; and under rule 53 any order passed by the licensing officer, whether empowered to license premises or performances, other than the District Magistrate, shall be subject to revision by the District Magistrate. Reading these provisions together, it is apparent that although compliance with the provisions of rules 21 and 25A is obligatory to entitle a person to the issue or renewal of a licence, the licensing officer may relax those conditions but only for due reason. In giving his opinion No. 4871, dated the 21st May 1948 the R.L.A. relied on rule 9 in the copy supplied to him but it now transpires that rule 9 was repealed and new rule 9 sub-rules (a) and (b) has been substituted. This rule, as it stands, requires a certificate by a licensed or qualified architect in the case of new structure to be used as a permanent or quasi-permanent theatres or building etc. as well as in the case of an existing building to be modified with additions and alterations for use etc. and it must be approved by the Executive Engineer, P.W.D. The provision contained in the old rule regarding the grant or renewal of a licence has not been incorporated in the new rule. However, rule 20 provides that no licence shall be granted unless the conditions are fulfilled. Although there is no express provision in the rules that compliance with the rules 21 to 25A is mandatory even for renewal of a licence, such provision is implicit (see rule 6(4)).

3. It is open to Government to lay down its policy about strict compliance with the provisions of the rules and to require the licensing officers to carry out that policy as far as possible and such suggestion or instruction on the part of Government would in no way fetter the discretion of the licensing officer vested in him under rule 52 to relax the conditions for due reasons. The ground of exemption stated by the City Magistrate, Hubli, while renewing the licenses of theatres at Hubli on 31st December 1947, was not based on due reason; for, his assumption that the rules were made in 1940, that is to say, long after the theatres were constructed was incorrect; and strict compliance with the conditions prescribed by rules 21, 23 and 25 which involved no structural alteration of the building was not difficult. It was for this reason that the H.L.A. stated in his last opinion dated the 21st May 1948 that the ground of exemption stated by the City Magistrate was hardly tenable, it being not for due reason. As stated above, the policy laid down by Government that strict compliance with ^{the} rule should be insisted on does not in any way fetter the discretion of the licensing authority. In the present case the licensing authority should have exercised his own discretion and, if he still found it necessary, could have relaxed the conditions for due reason; but instead of proceeding as provided in the rules, he was indiscreet enough to communicate the orders of Government to the proprietors of the theatres thereby giving in rise to the impression that the matter was concluded by Government's directive and that no discretion was left to him.

4. The proprietors of the theatres may, therefore, be informed that as was already communicated to them upon their

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former representation it is the policy of Government to insist on strict compliance of the rules; that in issuing instructions under their letter No. 570/36-B, dated the 30th July 1943 Government were merely reiterating their policy; that Government want to make it quite clear that in laying down this policy, Government in no way intended to interfere with or fetter the discretion of the licensing authority vested in him under rule 52; that the proprietors may now approach the licensing authority who should exercise his discretion in the light of the policy laid down by Government; and that if they still feel aggrieved by the decision of the licensing authority they may approach the District Magistrate under rule 53.

Sd/- P.W.LAD,
23/12.

Remembrancer of Legal Affairs.

U.R. to P.W.D., No. 12295, dated the 24th December 1948.

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